IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9475 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BADALBHAI NAGAJIBHAI VAGHARI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.H.L.Jani, learned A.G.P. for the respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 03/03/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dt.21.8.99 passed by the Police Commissioner, Baroda City detaining the petitioner as a dangerous person under the Gujarat Prevention of Anti Social Activities Act,1985. The grounds of detention enclosed with the detention order show that

there were 2 cases registered against the petitioner in the year 1995 and the other in the year 1999 at Navapura Police Station for the offences under Indian Penal Code such as Sections 323, 324, 504 and 337 and 114 and also under S.135 of the Bombay Police Act. Reference has also been made to the statements made by 3 witnesses with regard to the incidents dated 25.7.99, 11.7.99 and 24.7.99. Learned counsel for the petitioner has argued that on the basis of the grounds mentioned in the order of detention, the petitioner cannot be taken to be a dangerous person within the meaning of S.2(c) of the Act. Learned counsel has submitted that unless a case of committing offence habitually or attempting to commit or abets the commission of the said offence punishable under Chapter XVI or Chapter XVII of I.P.C. or any of the offences punishable under Chapter V of the Arms Act is made out a person cannot be taken to be a dangerous person for the purpose of detention. Learned A.G.P. also could not point out as to how the petitioner may be taken as a dangerous person, merely because one criminal case was registered against him in 1995 and other other case was registered against him in the year 1999. Once it is found that the petitioner is not engaged in habitually committing or attempting to commit the offences, it follows that the requirements of dangerous person are wanting within the meaning of S.2(c) of the Act. In absence of necessary ingredients to make out a case of dangerous person against the petitioner, the detention order cannot be sustained in the eye of law. Even if the subjective satisfaction is arrived at by the detaining authority, the same is required to be based on a material which can be said to be germane for the purpose of ingredients of dangerous person as defined under the Act.

Accordingly the impugned detention order dt.21.8.99 passed by the Police Commissioner, Baroda City, Baroda cannot be sustained in the eye of law. The same is hereby quashed and set aside. It is directed that the petitioner shall be released forthwith if not required to be detained under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.